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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

MICHAEL T. CASTRO, R.C.P.
P.O. Box 6523
Buena Park, CA 90622

Respiratory Care Practitioner License No. 22459
Respondent.

Case No. 1H-2008-162

OAH No.

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 4, 2008, Complainant Stephanie Nunez, in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs, filed Accusation No. 1H-2008-162 against MICHAEL T. CASTRO, R.C.P. (Respondent) before the Respiratory Care Board.

2. On or about July 24, 2002, the Respiratory Care Board (Board) issued Respiratory Care Practitioner License No. 22459 to Respondent. The Respiratory Care Practitioner License will expire on April 30, 2009, unless renewed.

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1 3. On or about August 4, 2008, Andrea Pina, an employee of the Board,
2 served by Certified Mail and Regular Mail, a copy of Accusation No. 1H-2008-162, Statement to
3 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
4 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is
5 P.O. Box 6523, Buena Park, CA 90622. A copy of the Accusation, the related documents, and
6 Declaration of Service are attached as Exhibit A, and are incorporated herein by reference.

7 4. Service of the Accusation was effective as a matter of law under the
8 provisions of Government Code section 11505, subdivision (c).

9 5. As of September 4, 2008, U.S. Postal Service records indicate that the
10 certified mail package was delivered on August 6, 2008, but has not been claimed. A copy of the
11 U.S. Postal Services records is attached as Exhibit B, and is incorporated herein by reference.

12 6. Business and Professions Code section 118, subdivision (b), states:

13 "The suspension, expiration, or forfeiture by operation of law of a license
14 issued by a board in the department, or its suspension, forfeiture, or cancellation
15 by order of the board or by order of a court of law, or its surrender without the
16 written consent of the board, shall not, during any period in which it may be
17 renewed, restored, reissued, or reinstated, deprive the board of its authority to
18 institute or continue a disciplinary proceeding against the licensee upon any
19 ground provided by law or to enter an order suspending or revoking the license or
20 otherwise taking disciplinary action against the license on any such ground."

21 7. Government Code section 11506, subdivision (c), states:

22 "The respondent shall be entitled to a hearing on the merits if the
23 respondent files a notice of defense, and the notice shall be deemed a specific
24 denial of all parts of the accusation not expressly admitted. Failure to file a notice
25 of defense shall constitute a waiver of respondent's right to a hearing, but the
26 agency in its discretion may nevertheless grant a hearing."

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1 8. Respondent failed to file a Notice of Defense within 15 days after service
2 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
3 Accusation No. 1H-2008-162.

4 9. California Government Code section 11520, subdivision (a), states:
5 "If the respondent either fails to file a notice of defense or to appear at the
6 hearing, the agency may take action based upon the respondent's express
7 admissions or upon other evidence and affidavits may be used as evidence without
8 any notice to respondent."

9 10. Pursuant to its authority under Government Code section 11520, the Board
10 finds Respondent is in default. The Board will take action without further hearing and, based on
11 Respondent's express admissions by way of default and the evidence before it, contained in
12 Exhibits A, B, and C, finds that the allegations in Accusation No. 1H-2008-162 are true.

13 11. The Respiratory Care Board further finds that pursuant to Business and
14 Professions Code section 3753.5, the costs of investigation and enforcement of the case prayed
15 for in the Accusation total \$1303.50, based on the Certification of Costs contained in Exhibit C.

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1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, respondent has subjected his
3 Respiratory Care Practitioner License No. 22459 to discipline.

4 2. A copy of the Accusation and the related documents and Declaration of
5 Service are attached.

6 3. The agency has jurisdiction to adjudicate this case by default.

7 4. The Respiratory Care Board is authorized to revoke Respondent's
8 Respiratory Care Practitioner License based upon the following violations alleged in the
9 Accusation:

10 On or about June 11, 2008, respondent was convicted of violating Health
11 and Safety Code sections 11377, subdivision (a) [possession of a controlled substance]
12 and 11364 [possession of controlled substance paraphernalia], in violation of Business
13 and Professions Code sections 3750, subdivisions (d) and (g), 3750.5, subdivision (a),
14 3752, and 3752.5.

15 5. Respondent is hereby ordered to pay the above costs of investigation and
16 enforcement of this action.

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Respondent is ordered to reimburse the Respiratory Care Board the amount of \$1303.50 for its investigative and enforcement costs. The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to reimburse the Board for its costs.

Respondent's Respiratory Care Practitioner License may not be renewed or reinstated unless all costs ordered under Business and Professions Code section 3753.5 have been paid.

This Decision shall become effective on October 30, 2008.

It is so ORDERED September 30, 2008.

Attachments: